

**National Postal Mail Handlers Union, Local 329
(United States Postal Service) and Myron L.
Bass. Case 26-CB-3320(P)**

November 30, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

Upon a charge filed by Myron L. Bass, an Individual, on May 16, 1995, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1995,¹ against National Postal Mail Handlers Union, Local 329, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 28 the General Counsel filed a Motion for Summary Judgment with the Board. On August 30, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 11 the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 15, notified the Respondent that unless an answer was received by August 22 a Motion for Summary Judgment would be filed.

The Respondent did not file a timely answer to the complaint.² In a letter dated September 1 from the Respondent's president, Charles E. Reynolds, to counsel for the General Counsel, and in its September 11 response to the Notice to Show Cause, however, the Respondent contended that it did not file an answer because it assumed that an affidavit given by Reynolds during the precomplaint investigative phase of this pro-

ceeding would suffice as an answer to the complaint. The Respondent's letters did not affirm or deny the allegations of the complaint or otherwise satisfy the requirements of Section 102.20 of the Board's Rules.

The Board's Rules provide that all allegations of the complaint that are not specifically denied or explained shall be deemed admitted unless good cause is shown. The Respondent did not file a timely answer. Further, in its September 1 letter, the Respondent did not show good cause for its failure timely to answer the unfair labor practice complaint; nor did it affirm, deny, explain, or deny knowledge of the allegations of the complaint, as required by Section 102.20 of the Board's Rules.³

Even assuming that the Respondent's response to the complaint was timely, it does not constitute a sufficient answer. The Board consistently has held that statements of position, including information submitted during the precomplaint investigative phase, are insufficient to constitute answers to complaints. See, e.g., *Wheeler Mfg. Corp.*, 296 NLRB 6 (1989); *Bricklayers Local 31*, 309 NLRB 970 (1992).

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (the Employer) provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including its Bulk Mail Center in Memphis, Tennessee, the only facility involved in this proceeding. The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA).

At all material times, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, by virtue of Section 9(a) of the Act, the Respondent has been the exclusive collective-bargaining representative of the mail processors of the Employer (the unit).

³ See *Homestead Electric & Machine Co.*, 306 NLRB No. 149 (Mar. 25, 1992) (not reported in Board volumes) (summary judgment granted, notwithstanding that respondent explained the reasons for the alleged conduct, because respondent did not satisfy requirements of Sec. 102.20 of the Board's Rules and its explanation did not constitute a valid defense); compare *Tri-Way Security*, supra, 310 NLRB 1222, 1223 (summary judgment denied where respondent's response, although technically not in compliance with the Board's Rules, denied key allegations and explained relevant facts and circumstances).

¹ All dates are 1995 unless otherwise noted.

² Thus, this case is distinguishable from cases in which the respondent made a good-faith attempt to file a timely answer, although the attempt was not strictly in compliance with the Board's Rules. See, e.g., *Tri-Way Security*, 310 NLRB 1222 (1993); *Acme Building Maintenance*, 307 NLRB 358 (1992).

At all material times, the Respondent and the Employer have maintained and enforced a collective-bargaining agreement covering conditions of employment of the unit and containing, among other provisions, a grievance-and-arbitration procedure. Since about February 13, 1995, the Respondent has failed to process a grievance concerning the suspension of Bass which Bass attempted to file under the provisions of the collective-bargaining agreement. The Respondent engaged in this conduct for reasons unrelated to its duty as bargaining representative.

By engaging in this conduct in connection with its representative status as described above, the Respondent has failed to represent Bass for reasons that are unfair, arbitrary, and invidious.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of the PRA, Section 8(b)(1)(A), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that since about February 13, 1995, the Respondent has failed to file and process Bass' grievance for reasons unrelated to its duty as bargaining representative, we shall order the Respondent to file a grievance on Bass' behalf with the United States Postal Service and pursue the grievance in good faith and with due diligence, pursuant to the contractual grievance/arbitration process. We shall also order the Respondent to allow Bass to be represented by his own counsel at the grievance-and-arbitration proceedings and pay the reasonable legal fees of the counsel.

If the United States Postal Service refuses to accept the grievance, we shall leave to the compliance stage the determination whether the Respondent is liable to make Myron L. Bass whole for any losses he suffered as a result of the Respondent's unfair labor practice.

ORDER

The National Labor Relations Board orders that the Respondent, National Postal Mail Handlers Union, Local 329, Memphis, Tennessee, its officers, agents, and representatives, shall

1. Cease and desist from

- (a) Failing to file and process a grievance, for reasons unrelated to its duty as bargaining representative, concerning the suspension of Myron L. Bass, which Bass attempted to file pursuant to the provisions of the collective-bargaining agreement with the United States Postal Service.

- (b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Request the United States Postal Service to accept and process a grievance concerning the suspension of Myron L. Bass and, if the United States Postal Service agrees to do so, file and process the grievance in good faith and with due diligence pursuant to the contractual grievance/arbitration procedure.

- (b) Allow Bass to be represented by his own counsel at the grievance-and-arbitration proceedings, and pay the reasonable legal fees of the counsel.

- (c) Post at its facility in Memphis, Tennessee, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees represented by National Postal Mail Handlers Union, Local 329 are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

- (d) Sign and mail to the Regional Director copies of the aforementioned notice for posting at the premises of United States Postal Service, Memphis Bulk Mail Center (the Employer) if the Employer is willing. If it is determined at the compliance stage of this proceeding that the Employer is not willing to post, National Postal Mail Handlers Union, Local 329 shall sign and mail copies to all employees of the Employer in the bargaining unit represented by Respondent.

- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to file and process a grievance, for reasons unrelated to our duty as bargaining representative, concerning the suspension of Myron L. Bass which Bass attempted to file under the provisions of the collective-bargaining agreement with the United States Postal Service.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL request the United States Postal Service to accept a grievance regarding the suspension of Bass and, if the United States Postal Service agrees to accept a grievance, WE WILL promptly file and process a grievance in good faith and with due diligence pursuant to the grievance-and-arbitration provisions of the collective-bargaining agreement.

WE WILL allow Bass to be represented by his own counsel at the grievance-and-arbitration proceeding, and WE WILL pay the reasonable legal fees of the counsel.

NATIONAL POSTAL MAIL HANDLERS
UNION, LOCAL 329